

Food prepared for immediate consumption is taxed at the high rate. Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. 86 Ill. Adm. Code 130.310 (This is a GIL).

October 17, 2001

Dear Xxxxx:

This is in response to your email of September 13, 2001 and the follow up letter received in this office on September 28, 2001. The nature of your email and letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter you stated and made inquiry as follows:

What is the sales tax on NAME Pizza UNCOOKED (take home) and NO place to eat on sight. Have talked to someone in your office and was told to send an e-mail for a hard copy of the answer.

Thank you.

Insufficient information has been provided in your request to make a definitive determination as to what sales tax rate is applicable to the food NAME is selling. For example, what is the nature and extent of preparation of the food? Is the food prepared in such a way that it may be stored by the customer for future consumption? Does NAME's offer to its customer the option of having the food cooked on site? Provided below is a general discussion of applicable sales tax rates for sales of food prepared for immediate consumption and sales of food for human consumption to be consumed off the premises where it is sold. Enclosed please find a copy of 86 Ill. Adm. Code 130.310, Food, Drugs, Medicines and Medical Appliances, the Department's regulation explaining the applicable tax rates for food.

Food for human consumption which is to be consumed off the premises where it is sold, other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption, is taxed at a low 1% sales tax rate (plus applicable local taxes). See Retailers' Occupation Tax Act (ROT); 35 ILCS 120/2-10. Food that has been prepared for immediate consumption does not qualify for the reduced rate of tax and is taxed at the full 6.25% sales tax rate. Sales of all hot food and hot food products are considered sales of food for immediate consumption. See 86 Ill. Adm. Code 130.310(b)(2). Additionally, the reduced rate does not apply to the sale of soft drinks and such items are taxed at the high rate. See Section 130.310(b)(5).

Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. It is presumed that retailers who sell food prepared for immediate consumption in individual single sized servings will sell all such items for consumption without substantial delay, regardless of when during the day such items are sold and actually consumed. The sale of food that is not prepared in any way by the retailer, for example pre-packaged candy bars, chips and ice cream, is not considered the sale of food for immediate consumption. Section 130.310(b)(6).

The test for determining which sales tax rate is applicable to food depends upon the nature of the seller's establishment. Your email stated that NAME does not provide facilities for on-site consumption of the food sold. When no facilities for consumption of food are provided, the Department examines all food sales at the establishment to determine if they are primarily (i.e., over 50%) sales of food for immediate consumption or sales of bulk-type (e.g., grocery) items. If the majority of the food sold is food prepared for immediate consumption without substantial delay then all sales of food by the establishment will be subject to the high rate of tax. If they are primarily bulk-type food sales, all food is taxed at the lower rate, except for sales of food prepared for immediate consumption and soft drinks and alcoholic beverages.

Based upon the limited amount of information provided, we believe that the pizzas are not prepared for immediate consumption. As we understand it, purchasers must cook these pizzas at a later time. It is also our understanding that there are no facilities for consumption of the pizzas on the premises. This being the case, we must also make another assumption in answering your question. We assume, for purposes of this letter, that application of the test described in the immediately preceding paragraph would result in a determination that the majority of food sales are sales not for immediate consumption. Given all of these assumptions, we believe that the low rate of tax would be applicable to the sales of pizzas you have described.

I hope this information has been helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales and use tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion  
Associate Counsel

DDK:msk  
Enc.